

UNITED STATES COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

V.

MARC J. GABELLI, and BRUCE ALPERT,

Defendants.

ECF CASE

**Case No. 08-Civ-3868
(DAB)**

**NOTICE OF MOTION TO DISMISS THE COMPLAINT FOR
FAILURE TO STATE A CLAIM AND FAILURE TO PLEAD FRAUD WITH
PARTICULARITY AND BECAUSE THE RELIEF SOUGHT IS BARRED BY STATUTE
OR BY STATUTE OF LIMITATIONS**

PLEASE TAKE NOTICE that, upon the declaration of Kimberly C.J. Spiering, sworn to July 25, 2008, the exhibits attached thereto, and the accompanying Memorandum of Law, Defendant Marc J. Gabelli will move this Court as soon as counsel can be heard, pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6), to dismiss all claims against Defendant in the above-captioned matter for failure to state a claim upon which relief may be granted and failure to plead fraud with particularity and because the relief sought by the complaint in the above-captioned action is barred either by statute or by the statute of limitations.

NOTICE IS FURTHER GIVEN that a response to the Motion, if any, shall be served by means calculated to ensure the receipt not later than 5:00 p.m. on October 3, 2008

on counsel for Marc Gabelli: Cleary, Gottlieb, Steen & Hamilton, One Liberty Plaza, New York,
New York 10006, Attention: Lewis J. Liman, Esq.

Dated: New York, New York
July 25, 2008

CLEARY, GOTTlieb, STEEN & HAMILTON

By: 

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